



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17513966

DATE: JULY 2, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a software telecom solutions business, seeks to employ the Beneficiary as a solution architect. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the labor certification does not require at minimum a master’s degree or a bachelor’s degree and five years of experience, and that the job opportunity therefore does not qualify for advanced degree professional classification.

On appeal the Petitioner submits a brief and additional documentation, asserts that the labor certification’s minimum requirements comport with the advanced degree professional classification sought in this proceeding, and requests that the Director’s decision be overturned.

Upon *de novo* review, we will withdraw the Director’s decision and remand this matter for further consideration and the entry of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date.¹ *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

The instant petition was accompanied by a labor certification that indicates the following in section H (Job Opportunity Information) regarding the requirements for the position of solution architect:

4.	Education: Minimum level required:	Bachelor’s degree
4-A.	Major field of study	Computer Science, Engineering, IT (Information Technology), or IS (Information Systems)
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	60 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	What level of education?	Master’s degree
8-C.	How much experience?	2 years
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	24 months
10-B.	What job title(s)?	Analyst, Engineer, or Software Development

¹ The priority date of an employment-based immigrant petition is the date the underlying labor certification was filed with the DOL. 8 C.F.R. § 204.5(d). In this case the priority date is May 23, 2020.

14. Specific skills or other requirements:

Education and experience required: Bachelor's degree in Computer Science or Engineering or IT or IS plus 5 years progressive experience in the job offered or as Analyst or Engineer or Software Development. In lieu of Bachelor's degree and 5 years experience will accept Master's degree in Computer Science or Engineering or IT or IS plus 2 years experience in job offered or as Analyst or Engineer or Software Development. Prior work experience must include 2 years experience in Java, WebLogic, SpringBoot, Python, MVC, ANT, Maven, Eclipse, Jenkins, PowerShell.

The Director denied the petition after filing on the ground that the labor certification's minimum requirements for the job offered were less than those required for the requested classification of advanced degree professional. The Director acknowledged the entries in sections H.4, H.6, H.8, and H.14 of the labor certification indicating that the job offered required either a bachelor's degree and five years of qualifying experience or a master's degree and two years of qualifying experience, including two years of experience with the software development tools identified in section H.14. However, the Director focused on the entries in sections H.4 and H.10 of the labor certification, interpreting them in combination as allowing an applicant with a bachelor's degree and two years of experience in one of three alternate occupations to qualify for the job offered. Since the combination of a bachelor's degree and two years of experience would not meet the minimum requirements for advanced degree professional classification, the Director concluded that the job opportunity did not qualify for the requested classification.

On appeal the Petitioner asserts that its minimum requirements for the job of solution architect, as expressed in sections H.4, H.6, and H.8 of the labor certification, are either a bachelor's degree and five years of experience or a master's degree and two years of experience, (including two years of experience in the software development tools identified in section H.14). The entry in section H.10, the Petitioner contends, was not intended to establish an alternative combination of a bachelor's degree and two years of experience but instead should be read in conjunction with the foregoing requirements in sections H.4, H.6, and H.8. The Petitioner contends that any misconceptions raised by its entry in section H.10 are due to the poor drafting of the ETA Form 9089.

As additional evidence of its actual minimum requirements the Petitioner submits copies of (1) the prevailing wage determination (Form ETA 9141) it filed with the DOL for the solution architect position and (2) the Petitioner's website posting for the solution architect position, both of which describe the educational and experience requirements in the same identical language used in section H.14 of the labor certification (essentially, a bachelor's degree and five years of qualifying experience or a master's degree and two years of qualifying experience). This documentation accords with the Petitioner's claim that its actual minimum requirements for the job offered are a bachelor's degree and five years of qualifying experience or a master's degree and two years of qualifying experience (including two years of experience with the software development tools identified in section H.14 of the labor certification). However, the Petitioner has not submitted its other recruitment materials underlying the labor certification, the actual online and print advertisements for the solution architect position. Without such evidence we cannot fully determine the veracity of the Petitioner's claim regarding the actual minimum requirements for the proffered position.

Since the Director did not request any evidence from the Petitioner to clarify its minimum requirements for the job offered, we will remand this case for further consideration. The Director may request additional evidence, including online and print advertisements, of the Petitioner's minimum requirements for the position of solution architect. The Director may also address and request additional evidence on any further issues that may be deemed relevant, such as whether the Beneficiary has the necessary education and experience to meet the minimum requirements of the labor certification and to qualify for classification as an advanced degree professional. After the Petitioner's response to the evidence request, or the expiration of the time period for a response, the Director shall issue a new decision on the petition.²

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² We note that shortly after the instant petition was denied the Petitioner filed another Form I-140 petition on behalf of the Beneficiary (receipt number [REDACTED]), for the same job and based on the same labor certification, seeking professional (EB-3) classification under section 203(b)(3)(A)(ii) of the Act. That petition was approved on January 21, 2021.